



Arnold Schwarzenegger, Governor
State of California
Business, Transportation and Housing Agency

Department of Managed Health Care
980 Ninth Street, Suite 500
Sacramento, CA 95814-2725
(916) 323-0435 -Phone
(916) 323-0438 -Fax
enforcement@dmhc.ca.gov

December 13, 2006

Jerry Fleming
Senior Vice President, National Health Plan Manager
Kaiser Foundation Health Plan, Inc.
1950 Franklin St., 20th Floor
Oakland, CA 94612

**RE: In the Matter of Kaiser Foundation Health Plan, Inc.
Enforcement Matter Number 05-180**

LETTER OF AGREEMENT

The Office of Enforcement of the Department of Managed Health Care (the Department) has concluded its investigation of Kaiser Foundation Health Plan's (Kaiser) rescission of the Enrollee's Personal Advantage membership with Kaiser. The Department has determined that Kaiser violated Health and Safety Code section 1389.3 by failing to establish that the Enrollee willfully misrepresented his health history to obtain health care coverage from Kaiser before rescinding his coverage.

Factual Background

The Enrollee was enrolled in an employer sponsored group health plan until his coverage ended in July 2004. Although the Enrollee was eligible for COBRA, he submitted an on-line application for Kaiser's Personal Advantage Plan. On July 24, 2004, Kaiser denied the Enrollee's application because of the disclosures he made on the health history portion of the application. Rather than sending the Enrollee Kaiser's "Reconsideration

Application” to provide further information on his health history, a Kaiser representative contacted the Enrollee on July 26, 2004, to discuss the health history disclosed on his application. Based on the Enrollee’s explanation, Kaiser approved his application on July 28, 2004. Coverage was effective on August 1, 2004. Once the Enrollee confirmed that his application with Kaiser was approved, he decided to enroll in Kaiser’s Individual Plan and did not obtain COBRA coverage.

On September 11, 2004, the Enrollee felt ill and learned from family members that he was disoriented and unresponsive when they questioned him. The Enrollee had a similar episode on September 12, 2004, that was observed by his sister. At that time, he realized something was wrong.

On September 13, 2004, the Enrollee contacted Kaiser and asked for the next available appointment with his PCP to discuss what had happened over the weekend. The Enrollee saw his PCP on September 22, 2004. Kaiser’s medical records indicate that the Enrollee had been having “hot flashes” following a car accident and resulting surgery performed 15 years earlier. At that time, he had an MRI and an EEG performed (both were negative), and his physician informed him that his “hot flashes” were of no medical significance. From that time until September 2004, there is no evidence that Enrollee sought any further medical treatment for his “hot flashes.”

The Enrollee was referred to a Kaiser Permanente neurologist for a consultation. At the time of the neurology consult, the Enrollee had taken Tegretol for two weeks and had not experienced another seizure. He informed his neurologist that his mother had similar “hot flash” spells, but as with him, there was never a diagnosis. Until September, 2004 he did not realize the seriousness of his condition. The Kaiser neurologist diagnosed the Enrollee with epilepsy and complex seizure disorder.

On November 22, 2004, Kaiser sent the Enrollee a letter stating that his coverage was “revoked as of August 1, 2004 due to material misrepresentation of your health history when you initially applied for membership.” Kaiser based its rescission on the Enrollee’s failure to disclose his history of undiagnosed hot flash spells.

The Enrollee appealed the rescission noting that he had been having “hot flashes” for years and had consulted his physician. At that time he had an EEG and MRI performed with normal results and he was advised that the “hot flashes” were of no medical significance. He also stated:

[a]t the time I filled out my app. with Kaiser, I had no idea of the severity of these spells. Nothing had increased in frequency or magnitude “in the last year”. How would I know of this if I was experiencing periods of amnesia with these spells? The first time I realized something was wrong was after being observed by my sister on Sep. 11, 2004.

Kaiser denied the Enrollee’s appeal on December 27, 2004, because the neurology consult records indicated that he had “intermittent confusion and memory loss for 15 years.” Kaiser disregarded the Enrollee’s explanation of what he knew at the time he completed his application and justified its rescission of his health coverage based solely on a review of the medical records prepared during the time the Enrollee was a Kaiser member.

The following facts evidence Kaiser’s failure to adequately investigate the Enrollee’s health history and information submitted during the Enrollee’s appeal of Kaiser’s rescission:

- Kaiser did not contact the Enrollee to discuss his hot flashes or request clarification as to why he did not list the undiagnosed condition in the “other” category on Question No. 9 on the health history questionnaire before rescinding his coverage. Therefore, Kaiser failed to adequately investigate the Enrollee’s knowledge of his medical condition at the time he completed his Personal Advantage application and cannot demonstrate that the Enrollee willfully misrepresented his health history before rescinding coverage.
- Kaiser never contacted the Enrollee to request a release to allow Kaiser to obtain earlier medical records during its rescission investigation. Therefore, Kaiser made no attempt to determine if the Enrollee had complained about his hot flashes to his previous providers or if he was diagnosed with a seizure disorder or any condition related to his hot flashes, by an earlier health care provider before rescinding his coverage.
- Kaiser’s Rescission notice states that the Enrollee’s membership was revoked “due to material misrepresentation of your health history when you initially applied for membership.” This standard of material misrepresentation is inconsistent with the contract for health care services between Kaiser and the Enrollee because both Kaiser’s Personal Advantage application and its Evidence of Coverage require a showing of intentional misrepresentation before a rescission can occur.

Although the contract between the Enrollee and Kaiser requires an intentional misrepresentation before coverage can be rescinded, Kaiser made no attempt to investigate the Enrollee's intent at the time he completed his application. Nor did Kaiser contact the Enrollee to discuss what he knew about his condition when he completed his application. Therefore, Kaiser failed to meet its burden of proving that the Enrollee intentionally or willfully omitted health history from his application.

- Kaiser expected a layperson to disclose an undiagnosed condition when a physician informed him that his "hot flashes" were nothing to worry about. Moreover, the Enrollee stated in a Declaration filed in Superior Court, that Kaiser's neurologist, who treated and diagnosed him with Epilepsy, stated that "there was no way I could have known about my seizures until they were observed by others in September 2004."

In order to justify its rescission, Kaiser relied entirely on medical records generated after the Enrollee was enrolled in Kaiser's Individual Plan. Kaiser made no attempt to obtain earlier medical records, a statement from his previous primary care physician, or follow up with the Enrollee to discuss what he knew about his condition at the time he applied for Kaiser membership. Therefore, Kaiser failed to meet its burden of establishing that the Enrollee willfully misrepresented his health history before rescinding coverage. Nevertheless, Kaiser's rescission letter included the following language:

Misrepresentation of your health status, when membership is based on that information, is a serious offense. Health Plan reserves the right to deny you enrollment in any Health Plan medical care coverage in the future and to refer this incident to law enforcement for further action if that is warranted. [emphasis added]

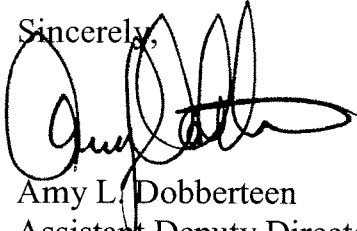
Even though Kaiser failed to make a sufficient showing that the Enrollee had obtained coverage by willfully or fraudulently misrepresenting his health history, it threatened to report him to law enforcement. Therefore, the Enrollee was left without health insurance following a serious diagnosis, and an allegation that he had committed fraud when Kaiser had no evidence to support this serious allegation.

Based on the facts set forth above, the Department has determined that Kaiser failed to meet its burden of demonstrating that the Enrollee willfully misrepresented his health history before rescinding his coverage in violation of Health and Safety Code section 1389.3. Although Kaiser disputes the Department's findings, it has agreed to settle this

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matter by way of this Letter of Agreement. The Department has determined that an administrative penalty of one hundred thousand dollars (\$100,000.00) is warranted in this matter and the Plan has agreed to pay the penalty. The Department agrees that execution of this Letter of Agreement and payment of the penalty will settle this enforcement matter and all issues, accusations and claims the Department has against the Plan with respect to this Enrollee.

Sincerely,

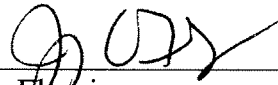


Amy L. Dobberteen
Assistant Deputy Director
Office of Enforcement

LC:slb

Accepted by Kaiser Foundation Health Plan, Inc.

Date: 12/13/06



Jerry Fleming
Senior Vice President, National Health
Plan Manager
Kaiser Foundation Health Plan, Inc.